



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** McDermott Shipyards

**File:** B-235664

**Date:** September 21, 1989

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### DIGEST

Where only one responsive bid was received, contracting officer's desire to obtain enhanced competition by relaxing delivery schedule and geographic restriction constitutes a compelling reason to cancel the invitation and resolicit.

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### DECISION

McDermott Shipyards protests the cancellation of invitation for bids (IFB) No. DACW61-89-B-0041, issued by the U.S. Army Corps of Engineers, for modification of floating drydock No. 5801. The agency determined that the only acceptable bid it received, McDermott's, was unreasonably high, and that cancellation therefore was appropriate. McDermott challenges the determination of price reasonableness.

We deny the protest.

The solicitation requested bids from shipyards along the Gulf Intercoastal Waterway, or the Mississippi, Ohio or Missouri River systems, to add 120 feet in length and 20 feet in width to the floating drydock. The Army received bids from two offerors: Gulf Coast Fabrication, Inc., submitted the apparent low bid of \$2,929,646, while McDermott bid \$4,532,400. Gulf Coast, however, failed to submit a bid bond executed by a surety, as required by the solicitation; accordingly, its bid was rejected as nonresponsive.

Based on a comparison with the independent government estimate, the Army determined that the remaining bid, McDermott's, was unreasonable. The agency initially estimated the contract cost of completing the required work at \$1,335,767; subsequently, prior to bid opening, this was revised upward to \$1,414,467, to account for certain work not considered when calculating the initial estimate. After bid opening, the government estimate was again revised

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upward, to \$2,540,493, to account for omitted work, an inadequate labor and other rates, and an increase in the installed cost of steel. Since McDermott's bid of \$4,532,400 remained 78 percent higher than this revised government estimate, the contracting officer determined that it was unreasonable and, accordingly, canceled the solicitation. Contracting officials proposed instead to resolicit under relaxed specifications, revising the solicitation by (1) extending the period for constructing and delivering the new hull section from 180 days to 270 days, (2) making the existing drydock available during any of several "windows of availability," and (3) extending the period for integrating the new hull section into the existing drydock and modifying the existing drydock from 120 days to 180 days.

Upon learning of the cancellation, McDermott filed this protest with our Office, contending that the revised government estimate was defective, and that the cancellation therefore was improper, because the estimate failed to make any provision for the cost of certain required work and seriously underestimated the cost of other required work. After further review, the Army ultimately concluded that, as alleged, its revised estimate failed to allow for the costs of several of the required operating systems and for the costs of joining the new construction to the existing drydock. Although the agency, as a result, now accepts an upward revision of the estimate to \$3,540,493 it continues to dispute McDermott's contentions with respect to other aspects of the estimate, and still maintains that the cancellation was proper.

Although a contracting agency has broad discretion to cancel an invitation, there must be a compelling reason to do so after bid opening because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed. Tapex American Corp., B-224206, Jan. 16, 1987, 87-1 CPD ¶ 63; see Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). The FAR authorizes cancellation where "all otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price," FAR § 14.404-1(c)(6); our Office will question an agency's determination of price reasonableness only where shown to be unreasonable or where there is a showing of bad faith or fraud on the part of contracting officials. See generally Nootka Envtl. Sys., Inc., B-229837, Apr. 25, 1988, 88-1 CPD ¶ 396.

Based on our review of the record, we find that the revised government estimate, upon which the determination was based, is of questionable reliability. In this regard, the Army

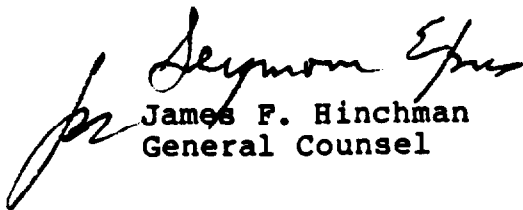
now accepts as accurate an estimated contract cost 150 percent higher than the pre-bid opening estimate and 39 percent higher than the government estimate upon which the determination of price unreasonableness was made; it admits to overlooking such seemingly basic cost factors as the cost of joining the new construction to the existing drydock. In addition, we find reason to question the credibility of the estimate even as revised. In particular, the specification required that the new work be blasted, that all remaining areas be "sandswept" clean, and that the entire vessel be coated with a prequalified coating system manufactured by the Devoe Marine Coatings Company. McDermott costed this work at \$813,945 based on a quote from Devoe, while the Army included only \$48,968 for this work in the estimate. As we find the specification clear and find no evidence that McDermott misinterpreted the scope of the required work, as the Army suggests, the accuracy of the estimate for purposes of rejecting McDermott's bid as unreasonably high is in doubt.

However, we find that the cancellation was justified on the basis of the agency's plan to increase competition by relaxing the specifications, that is, by removing the geographic restriction, extending the delivery periods, and allowing more flexibility with respect to the availability of the existing drydock.

We have previously recognized that a contracting officer's desire to obtain enhanced competition by relaxing a material specification constitutes a compelling reason to cancel an IFB after opening. Agro Constr. and Supply Co., Inc., 65 Comp. Gen. 470 (1986), 86-1 CPD ¶ 352; Grumman Corp., B-225621.2, B-225621.3, May 20, 1987, 87-1 CPD ¶ 528. The Army has determined that material portions of the specifications overstate its minimum needs and, given that only one responsive bid was received, we do not think it was unreasonable to conclude that the specifications substantially restricted competition. Further, whether or not McDermott's bid in fact was unreasonable in price, there is no indication that the bid was so low that the agency could not reasonably anticipate cost savings from enhanced competition due to significantly relaxed specifications. Under these circumstances, we find no basis for objecting to the contracting officer's business judgement that there is a reasonable possibility that more than one responsive bid

will be received in response to a resolicitation based on relaxed specifications. We conclude that the cancellation is unobjectionable.

The protest is denied.



James F. Hinchman  
General Counsel